

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL J. FJERSTAD,)	
)	CASE NO. C10-567-RSM-MAT
Petitioner,)	(CR07-277-RSM)
)	
v.)	
)	ORDER DENYING PETITIONER'S
UNITED STATES OF AMERICA,)	MOTIONS FOR APPOINTMENT OF
)	COUNSEL AND TO CONTINUE
Respondent.)	
_____)	

Petitioner Michael J. Fjerstad moves for appointment of counsel (Dkt. 53) and for a continuance of this § 2255 action until the Ninth Circuit rules on his attempt to bring an interlocutory appeal and this Court decides his motion for appointment of counsel (Dkt. 52). For the reasons stated below, the Court **DENIES** both motions.

The district court has the discretion to appoint counsel in habeas matters. *See Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986). The district court must appoint counsel in a § 2255 action when an evidentiary hearing is required pursuant to Rule 8(c) of the Rules Governing § 2255 Cases, *United States v. Duarte-Higareda*, 68 F.3d 369 (9th Cir. 1995), and when necessary for effective discovery pursuant to Rule 6(a). The district court also must appoint counsel when the case is so complex that the lack of counsel would result in the denial

01 of due process. *See Brown v. United States*, 623 F.2d 54, 61 (9th Cir. 1980) (citing *Dillon v.*
02 *United States*, 307 F.2d 445, 446–47 (9th Cir. 1962)). At this juncture, the Court has not
03 determined that an evidentiary hearing is required or that expansion of the record is necessary.
04 The Court finds that the complexities surrounding Mr. Fjerstad’s allegations do not indicate that
05 the lack of counsel would result in the denial of due process. Because appointment of counsel
06 is not mandatory, the Court considers whether the interests of justice otherwise require the
07 appointment of counsel. *See Terrovona v. Kincheloe*, 912 F.2d 1176, 1181 (9th Cir. 1990)
08 (quoting 18 U.S.C. § 3006A(a)(2)(B)). This determination is guided by an assessment of
09 petitioner’s ability to articulate his claim, the complexity of the legal issues, and the likelihood
10 of success on the merits. *See Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983) (per
11 curiam). The Court finds that Mr. Fjerstad has articulated his claims well, the legal issues are
12 not inherently complex, and his likelihood of success on the merits is low. The Court therefore
13 DENIES plaintiff’s motion for appointment of counsel (Dkt. 53) without prejudice to renewal
14 of this motion should the Court’s further review of the record indicate that appointment of
15 counsel is either necessary or would serve the interests of justice.

16 In a previous minute order, the Court informed Mr. Fjerstad that it would not consider
17 any further extensions to the briefing deadlines unless made by separate motion and supported
18 by good cause. (Dkt. 49.) Mr. Fjerstad contends that his attempt to appeal an order directly to
19 the Ninth Circuit—after the district court denied issuance of a certificate of appealability to do
20 so (Dkt. 48, at 4)—along with his motion to appoint counsel constitute good cause. The Court
21 disagrees. The Court permitted Mr. Fjerstad months of additional time to file an optional
22 responsive brief (Dkts. 35, 46, 49) and therefore exercises its discretion not to delay

01 consideration of the § 2255 motion any further. The Court **DENIES** Mr. Fjerstad's motion for
02 a continuance.¹ (Dkt. 52.)

03 The Clerk is directed to send a copy of this Order to petitioner and to the Honorable
04 Ricardo S. Martinez.

05 DATED this 21st day of December, 2010.

07 

08 Mary Alice Theiler
09 United States Magistrate Judge

21 1 Mr. Fjerstad has already missed the December 10, 2010, deadline to file a responsive brief and this matter was
22 ripe for consideration on December 17, 2010. (Dkt. 49.) If Mr. Fjerstad wishes to have the Court consider
additional briefing, he must attach the proposed brief to a motion for leave to file a responsive brief. The Court
will not delay consideration of this matter while he files such a motion.